IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 823

F. J. BUCKLEY, doing business under the fictitious firm name and style of F. J. BUCKLEY & Co., *Petitioner*

v.

WILLIAM A. SWAGO, as Real Estate Commissioner of the State of California, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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2 Davis, *Treatise on Administrative Law* 10
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v.

WYNNE A. SAVAGE, as Real Estate Commissioner of the State of California, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

Petitioner F. J. Buckley, doing business under the fictitious firm name and style of F. J. Buckley & Co., prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of the State of California, Second Appellate District, entered in the above-entitled case August 22, 1960.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal is reported at 184 Adv. Cal. App. 17, 7 Cal. Rep. 328. The decision of the Superior Court is not reported.

Reprinted as Appendices to this Petition, with the letter designation noted, are: (A) the Proposed De-

cision of the Hearing Officer; (B) the Decision of the Real Estate Commissioner, the respondent herein; (C) the Memorandum of Decision of the Superior Court; (D) the Judgment of the Superior Court; (E) the Opinion and Judgment of the District Court of Appeal; and (F) the Order of the Supreme Court of California denying the petition for hearing.

JURISDICTION

The judgment of the District Court of Appeal was entered on August 22, 1960. A petition for hearing was denied by the Supreme Court of California on October 19, 1960. On January 12, 1961, Mr. Justice Douglas signed an order extending the time for filing this petition to and including March 18, 1961.[1]

The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1257(3).

QUESTIONS PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment is violated by a decision of a state official depriving an individual of the right to practice his profession in view of either or both of the following circumstances:

1. The official who, under applicable state law had responsibility for making the decision, and who made

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[1] At the time the application for extension of time was presented, it was erroneously believed that the petition for hearing was denied by the Supreme Court of California on October 20, 1960, and it was so represented to the Court. Since this petition has been filed on March 17, 1961, this discrepancy has become immaterial.

the decision, did not hear any of the factual or legal issues involved; and

2. The court below, faced with the absence from the administrative findings of an indispensible jurisdictional fact, relied upon a presumption that, administrative action having been taken, the fact must exist.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provision and statutes involved in this case are set out in Appendix G, *infra*.

STATEMENT OF THE CASE

Petitioner has been in the real estate business in the Los Angeles area for approximately 35 years. (Tr. 160)[2] He had been successful and respected. By virtue of his recognized professional competence, he has acted as an appraiser in both Federal and State Courts for approximately 30 years. He was a leading member of his profession and was prominent in founding a professional association and promoting its activities. There is no indication that his professional reputation had ever been impugned, until the events giving rise to this case. (Tr. 160-163).

On or about July 9, 1956, an Accusation was filed against petitioner with the Real Estate Commissioner, the respondent herein, alleging that petitioner had engaged in certain transactions in 1955 involving a piece of real property, warranting the revocation of his license. In essence, the allegation was that, while peti-

[2] "Tr." herein refers to the Transcript of Hearing before the Hearing Officer, and "R." refers to the Clerk's Transcript before the Court below, certified copies of which have been lodged with the Clerk of this Court.

tioner—acting as a real estate licensee—had undertaken to sell the property for a commission, he had in fact purchased it for his own account through the use of dummies, without adequate disclosure to the vendor. Petitioner's defense was that he had been acting throughout the transaction as a private individual and not as a real estate licensee.

A hearing on the Accusation was held on November 18 and 19, 1958, before a Hearing Officer. The Real Estate Commissioner took no part in said hearing.

On November 21, 1958, the Hearing Officer submitted his Proposed Decision to respondent Commissioner. (App. A, *infra.*) As to the transactions involved in the purchase covered by the allegations, the Hearing Officer recited the various chronological steps and circumstances which virtually all appeared on the face of recorded documents. The Hearing Officer found that petitioner had been guilty of violations of certain provisions of the real estate sections of the California Business and Professions Code, see App. G, *infra*, and recommended that his real estate license be revoked.

Petitioner did not deny that the described transactions had occurred, but denied that he had ever acted as a real estate licensee in these transactions. His position was that he was acting for himself; and that the facts of record supported this defense and justified the conclusion that his conduct was not encompassed by the Code provisions he was acused of violating.

The Hearing Officer did not find that petitioner was acting as a real estate licensee. Nor did he make any pertinent finding in the negative—that petitioner was

not genuinely acting as an individual. The Hearing Officer simply made no finding which dealt directly with this central issue.

On the same day that the Proposed Decision was rendered—November 21, 1958—respondent Commissioner "adopted" it. (App. B, *infra.*) The "Decision" of respondent consisted of no more than two summary sentences: the initial one a rote adoption of the Proposed Decision; and the second, specifying the effective date for it. *Ibid.* There were no findings and conclusions. There was no independent consideration or decision.

In accordance with the California procedure for judicial review of administrative decisions, petitioner filed a Petition for Writ of Mandate, on February 20, 1959, in the Superior Court of the State of California in and for the County of Los Angeles. Therein petitioner raised the federal questions stated above. In Paragraph XIX of said Petition (R. 7-9), the first six subparagraphs deal with the findings and the issue which relate to whether petitioner was acting as a licensee or in his individual capacity; and subparagraph 7 alleges in pertinent part that the decision of respondent Commissioner "was arbitrary, capricious and constitutes the depriving petitioner of due process or a fair proceeding * * * that such Decision was made on the same day, contemporaneously and concurrently with said Proposed Decision, and without the exercise of any independent judgment, consideration or discretion on the part of the respondent." (R. 9).

The foregoing allegations were passed upon by the Superior Court in its Memorandum of Decision filed